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In re application of
Heinz Focke et al.
Serial No. 09/598,995
Filed: June 21, 2000
For: PROCESS AND APPARATUS FOR PRODUCING
AND/OR PACKAGING CIGARETTES

DECISION ON
PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE ORIGINAL NOTICE OF ALLOWANCE AND ISSUE FEE(S) DUE, PURSUANT TO MPEP § 711.03(c)(II) originally filed February 18, 2004 and resubmitted June 21, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of September 23, 2002, for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance be withdrawn. The petitioner asserts that the Notice of Allowance was not received at the applicant's correspondence address.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicants or applicant's representative did not receive the Notice of Allowance, mailed August 15, 2002. The evidence provided includes a statement by the petitioner that the Notice of Allowance, mailed August 15, 2002 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Allowance was not received. Also provided is a copy of the attorney's application docket records where the Notice of Allowance would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the technical support staff for prompt remailing of the Notice of Allowance and restarting of the statutory period of response from the remail date thereof.

It is further noted that the petitioner contends that the USPTO made an unauthorized change in the correspondence address of the instant application but a review of the USPTO application file reveals that the ASSOCIATE POWER OF ATTORNEY filed May 1, 2002 states that "All correspondence in connection with this application should be directed to Anthony J. Natoli at the address indicated hereinbelow" thus the address indicated on the Notice of Allowance, mailed

August 15, 2002, was correct as it directed the correspondence to Anthony J. Natoli as stated in the ASSOCIATE POWER OF ATTORNEY filed May 1, 2002.

The Petition is **GRANTED**.



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